

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 630 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NASIRKHAN ALIAS NASIRBHAYA GULABKHAN PATHAN

Versus

POLICE COMMISSIONER

Appearance:

MR YS LAKHANI for Petitioner

MR UR BHATT ADDL.GOVERNMENT PLEADER for Respondents

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 30/04/98

ORAL JUDGEMENT

The petitioner who is arrested and kept under detention passing the order of detention dt. 20th November, 1997 calls in question the legality and validity of the detention order passed by the Police Commissioner for the City of Surat invoking his powers under Sec. 3(2) of the Gujarat Prevention of Anti-Social Activities Act (for short the "Act").

2. The Police Commissioner for the City of Surat, on going through the records of the different Police Stations under him, found that the petitioner was dealing in liquor in huge quantity and several complaints were filed or received against him. He being the bootlegger was harassing the people so as to carry out his bootlegging activities smoothly. He knew that about three complaints were lodged against the petitioner. One was filed with Varachha Police Station and another was filed with Mahidharpura Police Station. As alleged, the petitioner was found in possession of liquor without any pass or permit and had committed the offences punishable under Secs. 66(1)(b), 65(b) and 85 as well as Sec. 116B of the Bombay Prohibition Act. He was also collecting the bottles of liquor from other States and was providing to different agencies and customers. The Police Commissioner after inquisition also found that the petitioner being the bootlegger was disturbing the public order by carrying out his subversive activities. He could also know that the petitioner was a headstrong person i.e. a tartar & decimator and by different criminal activities, he was terrorising the people. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism, he used to cause the people to bend his way. His hellish and infernal activities disturbing public order were going berserk. No one was, therefore, ready to come forward and state against him. Every one used to put up with petitioner's atrocities or terror. After a great persuasion, and when assurance was given that the facts about them disclosing their identity would be kept secret, some of the witnesses have under great tension stated against the petitioner. After a deep inquiry, the Police Commissioner found that to curb the anti-social, subversive and chaotic activities of the petitioner, unspeakable diabolism terrorising the society, and upsetting the public order and leading to anarchy, ordinary law was falling short and was sounding dull. The only way out to hold him in kittle was to detain him under the Act. He, therefore, passed the impugned order. Consequent upon the same, the petitioner came to be arrested, and at present, he is in custody.

3. Challenging the order, it is submitted on behalf of the petitioner that there was no justification for the police to pass the impugned order. Even if it is believed for a while that the petitioner was a bootlegger, that cannot be a ground to pass the order in question. It is also the submission of the petitioner that without any just cause the particulars of the witnesses were suppressed, as a result his right to make

effective representation was jeopardised. He cannot be described as the dangerous person. On other grounds also making necessary submission this court is urged to set aside the order holding that the order of detention passed is not at all in consonance with law and pronouncements already made up-till-now by this court as well as the Apex Court. Mr. U.R. Bhatt, learned AGP made sincere efforts to support the order in question. After I made query to both the learned advocates, they have tapered off their submissions confining to the only point namely creation of insecurity or panic in general public and thereby disturbing the public peace and order. I will therefore confine to that point alone which is going to the root of the case.

4. As per the order passed, it appears that because of the bootlegging activities the Police Commissioner was led to pass the order in question. Simply because a person is a bootlegger he cannot be detained under the provisions of the Act unless his activities as a bootlegger affect adversely or likely to affect adversely the maintenance of the public order. A person may be fierce by nature, but so long as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise. The authority passing the order must show that he had sufficient material indicating that there was a feeling of insecurity amongst the general public and in the minds of the members of the public, panic was created upsetting the tempo of life of the community. If the bootlegger while carrying on his business indulge in use of force and violence and by illegal sale of liquor if he creates an atmosphere of fear and terror by beating the innocent persons or threatening the innocent persons, such minor incident of beating or threatening would not create terror in the public and would not disturb the public peace and order. On such ground therefore the petitioner though believed to be a bootlegger as alleged and carrying out certain activities as alleged, the same being minor incidents cannot be made the base to brand the petitioner as dangerous person creating insecurity or panic in general public for which the detention can be said to be the only way out. For my such view, a reference of a decision in the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad City - AIR 1989 S.C. 491, may be made. In this case, when on the basis of few minor incidents of beating and threat referred to by the authority passing the order in his order the petitioner alleged to be the bootlegger cannot be branded as 'dangerous person' and his activities cannot be said to be the activities creating insecurity

or panic in general public. In view of the matter, the order of detention passed cannot be maintained. The same being illegal has to be quashed and set aside.

5. For the aforesaid reasons, this petition is allowed. The order of detention passed on 20th November, 1997 by the Police Commissioner, Surat, is hereby quashed and set aside and the petitioner-detenu is ordered to be set at liberty forth with, if no longer required in any other case. Rule accordingly made absolute.

(ccs)